

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KENNETH HALE and VIKI HALE,)

Plaintiffs,)

vs.)

Case No. 15-cv-00745-JPG-SCW

BAYER CORPORATION, *et al.*,)

Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on defendants’ Motion (Doc. 53) for Relief pursuant to Federal Rule of Civil Procedure 60(a). Plaintiffs have not filed a response and the time for doing so has expired.

Federal Rule of Civil Procedure 60(a) provides that, “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment” as long as an appeal has not been docketed. Defendants were granted summary judgment on April 21, 2017 and the dismissal was without prejudice. The Defendants move the Court to correct the dismissal to reflect dismissal with prejudice.

Inadvertently designating a dismissal as being “without prejudice” instead of “with prejudice” is the type of rote, typographical error of transcription that could be committed by a law clerk or a judicial assistant. It is not an error of judgment or legal reasoning, as no chain of legal reasoning could possibly lead a court to conclude that summary judgment should be granted without prejudice. Indeed, the very concept of granting summary judgment without prejudice is internally incoherent. . . . Rule 60(a) authorizes a district court to modify a judgment so that the judgment reflects the ‘necessary implications of the court’s decision,’ and a motion for summary judgment “is necessarily granted with prejudice.”

Rivera v. PNS Stores, Inc., 647 F.3d 188, 194–95 (5th Cir. 2011).

Summary judgment is a dismissal on the merits and should therefore be a dismissal with prejudice. As such, the Court finds that the dismissal without prejudice was a mistake arising from oversight.

An appeal has not been docketed. Therefore, Defendants' Motion (Doc. 53) for Relief pursuant to Federal Rule of Civil Procedure 60(a) is **GRANTED**. The Court's Memorandum and Order of April 21, 2017 is amended to reflect dismissal with prejudice and the Clerk of Court is **DIRECTED** to enter an amended judgment to reflect dismissal with prejudice.

IT IS SO ORDERED.

DATED: 6/6/2017

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE